

Comments on John Fischer's *My Way*

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When reading the careful, ingenious and illuminating essays contained in this collection, you cannot help but be struck by John Fischer's intellectual honesty. More than twenty years ago, he described the broad outlines of his now very famous positions. But his accounts of moral responsibility, of the nature of control, of the value of morally responsible action and of the relations of these things to determinism, have been refined through serious and careful engagement with the many discussions and arguments that have been offered in response to his views. He doesn't let published criticisms or proposed refinements fall through the cracks. Instead, he picks them up. He takes the arguments of others tremendously seriously, gives them their due, charitably characterizes what insights are contained in them, and determines with precision, and expresses with great clarity, their impact on his own positions. Fischer is at his best, perhaps, when he untangles argumentative complexity and describes what positions remain available once what is right about his own or other people's arguments is separated from what is not. I am going to focus here on one line of argument, although, as we'll see, it intersects with others. What this means is that I am neglecting a lot of great value that is contained between the covers of *My Way*. But I hope to be giving Fischer the same compliment that he pays to others by engaging with the details of one of his argumentative lines.

What does adherence to the maxim that ought-implies-can commit us to with regard to the question of the sense, if any, in which alternate possibilities are required for moral responsibility? There are several ways of approaching this question. In his essay "'Ought-Implies-Can,' Causal Determinism, and Moral Responsibility", Fischer starts by considering Ishtiyaque Haji's claim that if determinism is true, then there

is nothing that anyone ought or ought not to do.¹ Deontic judgments, according to Haji, are all false under determinism. Haji's argument uses ought-implies-can as a premise. The argument looks like this:

(1.1) (S A's & S ought not to A) → (S ought to do something other than A)

(1.2) (S ought to do something other than A) → (S can do something other than A)

(1.3) (Determinism & S A's) → not-(S can do something other than A)

(1.4) Determinism → not-(S ought not to A)

I've argued elsewhere that (1.1) is false.² Someone who meets an obligation not to act not through action but through inaction would not necessarily be failing to meet some other obligation to act. Thus, it must be possible to meet an obligation not to act without being under any obligation to act. The person who meets his obligation not to sell drugs while asleep is not thereby shirking some obligation to act at that time. Several people have criticized this objection to (1.1), including Haji.³ But Fischer grants it and so agrees that (1.1) is false. But he thinks the argument can be reformulated using a true premise similar to (1.1). To appreciate Fischer's reformulation, let's fix a pair of terms (these terms are mine, not Fischer's):

S's bodily movement M is a *refraining from A-ing* iff (1) M is not an A-ing, & (2) M is intentional under the description "not A-ing".

¹ Ishtiyaque Haji, *Deontic Morality and Control*, Cambridge: Cambridge University Press, 2002, esp. pp. 36-58.

² Gideon Yaffe, "'Ought' Implies 'Can' and the Principle of Alternate Possibilities" in *Analysis*, v. 59, n. 3, July 1999. And "More on 'Ought Implies Can' and Alternate Possibilities" in *Midwest Studies in Philosophy: Free Will and Responsibility*, v. 29, 2005.

³ Alex Blum, "The Kantian versus Frankfurt" in *Analysis*, 60 (2000) : 287-88; Ira Schnall "The Principle of Alternate Possibilities and 'Ought' Implies 'Can'" in *Analysis*, 61 (2001) 335-340; Ishtiyaque Haji, *Deontic Morality and Control*, Cambridge: Cambridge University Press, 2002, esp. pp. 54-58; David Copp, "'Ought' Implies 'Can', Blameworthiness, and the Principle of Alternate Possibilities" in *Moral Responsibility and Alternative Possibilities*, D. Widerker and M. McKenna, eds., Aldershot: Ashgate Publishing, 2003, pp. 265-299; David Copp, "'Ought' Implies 'Can' and the Derivation of the Principle of Alternate Possibilities", forthcoming in *Analysis*.

S's bodily movement M is an *omitting of A* iff (1) M is not an A-ing, & (2) M is not intentional under the description "not A-ing".

The definitions here are depending on a Davidsonian theory of action. But the distinction could be drawn without that background theory. I am stipulating that "refraining" refers to cases in which we do something in furtherance of an intention not to do something else, and "omitting" refers to cases in which we do in fact fail to act in a particular way, but nothing which we do is done in furtherance of any intention not to act that way. To alter Davidson's famous example, consider the person who turns on the light and does not alert the burglar upstairs.⁴ If he intended not to alert him because, for instance, he is hoping to sneak up on him—if the movement of his finger on the switch is intentional under the description "not alerting the burglar"—then he is refraining from alerting the burglar. However, if he has no idea there is a burglar in the house, then he is omitting to alert the burglar; his bodily movement is an instance of not alerting the burglar, but it is not intentional under that description. My objection to (1.1) was driven by the observation that an obligation not to A could be met by omitting A; (1.1) seems plausible only when we think of obligations not to act as fulfilled only through refrainings.

Using the refraining/omitting distinction, we can express Fischer's reformulation of the argument like this:

- (2.1) (S A's & S ought not to A) \rightarrow (S ought to have refrained or omitted from A-ing)
- (2.2) (S ought to have refrained or omitted from A-ing) \rightarrow (S could have refrained or omitted from A-ing)
- (2.3) (Determinism & S A's) \rightarrow (not-(S could have refrained or omitted from A-ing)).
- (2.4) \therefore (Determinism & S A's) \rightarrow not-(S A's & S ought not to A)

(2.1) is true, thinks Fischer, because it involves the recognition that obligations not to act can be fulfilled either through true action, what

⁴ In Davidson's example, the person does alert the burglar, although does not know that he has. Donald Davidson, "Actions, Reasons and Causes" in *Essays on Actions and Events*, Oxford: Oxford University Press, 1980, pp. 3-19.

I am calling “refraining”, or through inaction, what I am calling “omitting”. I wonder if it is ever true that an agent ought to X where X is not an action; if it is not, then (2.1) is false. If this is right, then it is possible to meet an obligation without it being the case that the behavior through which one meets it is behavior that one ought to have engaged in. I think this might be right, but let’s put that aside and grant, for the sake of argument that (2.1) is true. Still, Fischer rejects the conclusion in (2.4). He thinks that determinism is compatible with deontic judgments to the effect that a person did something that he ought not to have done. Fischer’s move is to reject premise (2.2) and thereby to reject ought-implies-can.

Ought-implies-can has tremendous intuitive appeal, as Fischer recognizes. Saving the appearances requires saving both the truth of deontic judgments and ought-implies-can. Haji takes determinism to require us to give up the one, Fischer the other, and so both think that determinism is incompatible with some part of ordinary moral thought. But I think both can be saved even in the face of determinism. And I’ve granted, for the sake of argument, that (2.1) in Fischer’s revised version of Haji’s argument is true. This position is coherent because I reject premise (2.3), the claim that determinism undermines the ability to refrain or omit. There’s been no shortage of literature on the claim that determinism undermines the ability *to act*, as one does when one refrains. In fact, I think it is fair to say that Fischer is, along with Peter Van Inwagen, the most important contributor to that literature. Let’s grant, then, for the sake of argument, that if determinism is true then no agent can refrain from action and turn our attention to the question of whether determinism undermines the ability of an agent to omit action. I think it does not *even granting that it undermines the ability to refrain*. In fact, as I’ll suggest, the thought that determinism undermines the ability to omit derives from a failure to really appreciate the difference between refraining and omitting. In short, we reach the conclusion of Fischer’s revised argument, (2.4), only by making the very same mistake that I have been warning against from the beginning: the mistake of failing to appreciate the difference between not doing something by *doing* the act of not acting and not doing it by doing nothing at all.

To see this first consider the following argument for the claim that determinism undermines the ability to omit, an argument that I take to be implicit in Fischer’s discussion. Here L and P are propositions describing, respectively, the actual laws and the actual past prior to the time of action:

$$(3.1) \quad (\text{Determinism} \ \& \ S \ A's) \rightarrow \text{not}-(\text{Possibly}((S \text{ omits } A\text{-ing}) \ \& \ P \ \& L)))$$

(3.2) not-(Possibly((S omits A-ing) & P & L)) \rightarrow not-(S could omit A-ing)

(3.3) \therefore (Determinism & S A's) \rightarrow not-(S could omit A-ing)

The argument, in other words, runs like this: If determinism is true and the agent acts, then there is no possible world in which the laws and the past are held fixed and in which the agent omits action. But such a possibility is required for the agent to have the ability to omit. Hence determinism undermines the ability to omit action on the part of an agent who actually acted. Or, instead, let's put the argument using the metaphor of "accessibility of possible worlds", which is the idiom that Fischer favors in certain contexts. Using that metaphor the argument runs like this: If determinism is true and the agent acts, then every possible world in which the agent omits is one in which the laws or the past are different from those in the actual world. However, the only possible worlds that are accessible from the actual one are those in which the laws and the past are held fixed; hence the agent cannot get to the possible worlds in which he omits. But for it to be the case that the agent *could* omit, it must be the case not just that there is a possible world in which he omits, but also that that world be accessible to the agent. Thus, if determinism is true and the agent acts, then it is also the case that the agent could not omit that action.

Now, I strongly dislike the metaphor of accessibility. It encourages a thought which is not only misplaced, but pernicious when thinking about abilities to behave otherwise than one has actually behaved. The pernicious thought is that to act otherwise, as one does in some possible world, one must do something first, namely "access" that possible world, as though the world in which I pull the trigger that I didn't actually pull was behind some door that I needed to first open before I could pull the trigger. Still, if used carefully, the metaphor of accessibility does no damage. Talk of accessible worlds can be rephrased as talk of *relevantly similar* possible worlds. Notice that premise (3.2) enshrines the thought that every accessible possible world is one which is similar to the actual world in its past and its laws. Why this constraint on accessibility? The reason offered by the Consequence Argument is that the past and the laws are not things that agents can affect. So, the thought is, when deciding whether or not a possible world is accessible, we must check to see if all those things that the agent is powerless to affect are as in the actual world; if not, then the world in question is not accessible. Since the past and the laws fit the bill, we are to confine our gaze to those: we are to check, that is, to see if in any world

sharing the past and the laws with the actual world the agent acts otherwise and we find that, if determinism is true, she doesn't.

But why should we confine our gaze to worlds in which all those things that the agent is powerless to affect are as in the actual world? There is probably more than one way to capture this intuition, but here's one: When an agent is deliberating correctly about what to do, he considers only those courses of conduct that he believes he has the ability to do. In deciding what he has the ability to do, he is really asking himself what he might do *given that the world is in some ways unchangeable by him*. That is, the deliberating agent holds fixed those things that he is, or believes himself to be, powerless to affect. It would be a waste of deliberative effort to consider courses of conduct other than those that are compossible with those actual conditions that one cannot change. So far so good. But how do we get from this observation about deliberation to the view that worlds are inaccessible, in the relevant sense, if they differ from the actual world in ways the agent is powerless to change? Why should the limits on the propriety of deliberation place limits on what agents can and cannot do? It seems to me that the gap must be filled by some claim to the effect that agents can meet their obligations only through behaviors that could have been considered in the course of proper, non-defective deliberation. For someone who makes such a claim, it just seems obvious that if X isn't something that the agent can properly consider deliberating about whether or not to do, then X isn't something that the agent can do in the relevant sense of "can".

But notice that this is precisely the claim that is being denied by someone who accepts, as both I and Fischer do, that it is possible to meet an obligation not to act through omission. Omissions are not properly considered in deliberation. A person who deliberates about whether to be knocked unconscious through no exercise of his agency before the moment of action is not deliberating properly; it's not up to him whether or not he omits and so he shouldn't waste time deliberating about it. As I see it, we learn from the fact that it is possible to meet an obligation through omission *that* the facts about what we can properly consider in deliberation are not congruent with the facts about what we can do in the sense of relevance to responsibility. The past and the laws are to be held fixed by the deliberator, and that might even imply that they are to be held fixed when asking the question of whether the agent *refrains* in a relevant possible world; but they are not to be held fixed by the person considering whether the future might involve his omitting to do something, and so they are not to be held fixed when asking the question of whether the agent *omits* in a relevant possible world. Someone who agrees that we can meet our obligations

not to act through omission ought to have low standards for accessibility when it comes to the question of what we can omit, and he very well might have higher standards for accessibility when it comes to the question of what we can refrain from doing.

So, premise (3.2) is false. In thinking about that premise, we equate “can omit A” with “there is a possible world in which S omits A and that world is accessible”. But the antecedent of the conditional in (3.2) involves the tacit assumption that a world is accessible only if the past and the laws are as in the actual world. As I’ve argued, this assumption is false. A world could be accessible even if it differs from the actual world in respects that the agent is powerless to affect. I’m granting for the sake of argument that this is not generally true—I’m granting that when compliance with the norm in question requires actual *action*, then a world is accessible only if it shares the past and laws with the actual world—but it is true when one can comply through omission. If I A in a deterministic world violating a norm that tells me not to, it is still the case that I can omit provided that there’s a possible world in which I do not A, and even if that possible world differs from the actual in its past or its laws. This claim is compatible with saying that one cannot refrain from A if all those worlds in which one does refrain differ from the actual in the past or the laws.

Fischer expresses disagreement with this line of thought in his book. In the following passage, he uses the phrase “intentional not-Xing” to refer to what I have called “refraining” and “unintentional not-Xing” to what I am calling “omitting”. He writes:

I do not see why the move from requiring that the not-Xing be intentional to allowing it to be unintentional entails any change in the conditions of accessibility. After all, the *motivation* behind “ought implies can” seems to entail that if one ought not to X, then one not-X’s in some possible world one can “get to from here.” If one is willing to accept this in the context of actions and intentional not-Xings, one should, it seems, accept it in the context of unintentional not-Xings. (p. 220)

But there is a reason: if the behavior the norm is demanding that one engage in is not action—if an omission will do—then it needn’t be the case that “getting to elsewhere from here” be accomplished by doing anything; a world in which I don’t act is accessible even if it is not one that I could properly deliberate about realizing. Further, and more importantly for our purposes here, this is a reason that Fischer himself is committed to accepting by his views on another topic, namely his well-known response to the “flickers of freedom” approach to the Frankfurt counterexamples to PAP. Let me conclude by explaining.

Quite some time ago, Fischer recognized that some would argue that there are alternate possibilities available to the subjects of Frankfurt examples. If, for instance, the counterfactual intervener would intervene were the agent to blush, and the agent doesn't in fact, then, at the least, the agent *could have blushed*, and so could have come to act as he actually did through the exercise of the intervener's nefarious powers instead of acting on his own. In responding, Fischer argues that the alternatives in such cases are not sufficiently "robust". As I understand it, this is a symmetry argument. Fischer's idea is that whatever the opponent takes to be required for responsibility in the actual sequence over and above alternate possibilities must be true in the alternate sequence too. Otherwise, the possible alternative isn't sufficiently "robust". But the symmetry principle that Fischer's argument here employs commits him to the view that I am pressing with regard to "accessibility". Say that an agent ought not to A at noon and he complies with this norm by omitting A at noon; there's a power outage so his alarm fails to go off at 11:55, and so he's asleep at noon. It's a further fact about this agent that if the alarm had gone off—if the world had been different in ways that the agent was powerless to realize—then he would have awakened in time to violate the norm by A-ing at noon. Could he have A'd at noon? The principles of symmetry that Fischer employs in objecting to the flicker of freedom theorists, together with his acceptance of the view that this agent meets his obligation not to A at noon when he omits A-ing at noon, commit him to answering "yes". After all, a variety of conditions conspired to bring it about that the agent actually omitted A-ing at noon and none of those conditions were realized through exercises of his agency. By symmetry, then, the alternative in which the alarm does go off, also through no exercise of his agency, is sufficiently "robust". But that amounts to saying that it is a world that the agent "can get to from here" even though it differs from the actual world in its past or its laws. Fischer likes symmetry. So do I. So he should join me in accepting its implications.

Philosophers who think about freedom owe a great debt to John Fischer. This debt is owed not just because he has made great progress on issues about which all of us deeply care, but also because he never fails to bring us all into the debate, no matter how small our contributions. I am personally grateful to him for this. I've tried to express that gratitude here by extending one conversation just one small step further.